

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JOHN G. PEDICINI,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	Case No. 04-12395-JLT
UNITED STATES OF AMERICA,	:	
ANN M. VENEMAN, SECRETARY,	:	
UNITED STATES DEPARTMENT OF	:	
AGRICULTURE, AND LINDA	:	
SPRINGER, DIRECTOR, UNITED	:	
STATES OFFICE OF PERSONNEL	:	
MANAGEMENT,	:	
	:	
Defendants.	:	

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S THIRD MOTION FOR LEAVE TO
DEPOSE ADDITIONAL WITNESSES, MAKE DISCOVERY REQUESTS,
AND EXTEND THE DISCOVERY PERIOD**

At some point, enough is enough. After the Court so graciously granted Plaintiff's motion to depose five additional witnesses after the discovery period ended and after having deposed thirteen witnesses, Plaintiff moves for a third time to depose yet more witnesses. In this simple discrimination case, Plaintiff has taken an exceptional number of depositions, and a grant of their motion for additional depositions will unduly burden the defendants.

On January 10, 2006, the Court denied Plaintiff's request for certain agency vacancy announcement and other documents. By his recent motion, Plaintiff has resubmitted this request. The Court should again deny this request as Plaintiff has presented no new information that warrants the Court's reconsideration on this issue. The Court should also deny Plaintiff's specious

request for an order requiring the United States to reimburse Plaintiff for the travel costs of his depositions. It follows that if the Court denies Plaintiff's motion for leave it should also deny his request to extend the discovery deadline as such an extension would be unnecessary.

ARGUMENT

I. THE COURT SHOULD DENY PLAINTIFF'S MOTION FOR LEAVE TO CONDUCT ADDITIONAL DEPOSITIONS

A. STANDARD OF REVIEW REGARDING ADDITIONAL DEPOSITIONS

Rule 30(a)(2) of the Federal Rules of Civil Procedure, provides, in pertinent part:

A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2) . . . if, without the written stipulation of the parties . . . a proposed deposition would result in more than ten depositions being taken under this rule . . . by the plaintiffs, or by the defendants, or by third-party defendants.

Fed. R. Civ. P. 30(a). Rule 26(b)(2) provides, in relevant part, that discovery should be limited if the Court determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the party's resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

Fed. R. Civ. P. 26(b)(2). Further, Local Rule 26.1(c) provides,

in pertinent part:

Discovery Event Limitations. Unless the judicial officer orders otherwise, the number of discovery events shall be limited to each side . . . to ten (10) depositions

L.R. 26.1(c).

B. PLAINTIFF SEEKS UNREASONABLY CUMULATIVE AND DUPLICATIVE DISCOVERY AND HAS ALREADY TAKEN AN ADEQUATE NUMBER OF DEPOSITIONS

Plaintiff now wishes to depose FNS employees Lori Lodato and Juanita Makuta, the latter of whom purportedly works in Virginia. Plaintiff claims that the two proposed deponents will provide testimony supporting his claim that he "was and is the backup funds officer" for his office and can give "information about spoilage of evidence."¹

Thus far, the plaintiff has deposed eighteen people, ranging from plaintiff's co-workers to the Administrator of the USDA-FNS, a presidential appointee. During the majority of the depositions, plaintiff exhausted questions concerning whether he "was and is the backup funds officer."² Moreover, as stated

¹Prior to Plaintiff's termination of his lawyers, counsel for both parties discussed this issue in early October 2005 after Plaintiff first raised concerns regarding spoliation of evidence. Counsel for both parties resolved this concern, particularly after defense counsel (i) discovered that the accusations largely were untrue and inflated, and (ii) assured Plaintiff's counsel that the agency had preserved the information from Mr. Malone's computer.

²See Deposition of Jonathan Lash, pp. 10-14, 16-17, attached hereto as Exhibit A; Depositions of Douglas MacAllister at pp. 2-225-2-228, attached hereto as Exhibit B; John Ghiorzi at p. 28,

numerous times, every management deponent testified that plaintiff performed the back-up functions to the funds officer in NERO - they disagreed only with plaintiff's claim that he had the authority to certify that funds are available. Therefore, it is completely unnecessary to conduct further discovery on whether the plaintiff was a back-up to the funds officer in NERO. Plaintiff also exhausted the issue of whether he had the authority to certify that funds are available by virtue of holding the position of alternate funds officer.³

Nothing revealed during the eighteen previous depositions necessitates the two additional depositions on this subject matter. Plaintiff simply hopes that through additional fishing he eventually will discover testimony supporting his claims. The discovery plaintiff seeks is unreasonably cumulative and duplicative of the testimony now on record, and, furthermore, he clearly has had ample opportunities to obtain information on these topics. As such the Court should deny the plaintiff's

attached hereto as Exhibit C; Robert Canavan at pp. 124-125, attached hereto as Exhibit D; Frances Zorn at pp. 105-106, 135-136, attached hereto as Exhibit E; Arthur LeBlanc at pp. 17, 53-54, attached hereto as Exhibit F; and Michael Malone at pp. 140, 167-168, attached hereto as Exhibit G.

³See Depositions of Douglas MacAllister at pp. 28, 30-33, attached hereto as Exhibit B; Robert Canavan at pp. 61, 152-159, attached hereto as Exhibit D; Frances Zorn at pp. 105-112, attached hereto as Exhibit E; Arthur LeBlanc at pp. 8, 17, 48-49, 54-55, attached hereto as Exhibit F; and Paride Monti at pp. 9-11, 15, 18-19, attached hereto as Exhibit H.

motion for leave.

C. THE TWO ADDITIONAL DEPOSITIONS WILL UNDULY BURDEN THE DEFENDANTS

Plaintiff took multiple days to complete some of his depositions. In all, the plaintiff's depositions, not including preparation time, took twelve days and approximately eighty hours. For the sake of putting into perspective the value of counsel's time for these depositions, based on a billable rate of \$265 per hour, the government's reasonable attorney's fees for defending the depositions amount to approximately \$21,200.00.⁴ The government has expended over six-thousand dollars on the transcripts of plaintiff's deposition. Plaintiff's depositions have taken up a considerable amount of time, and have caused the United States to expend a considerable amount of resources. Because the burden and expense of the proposed depositions outweighs their purported benefit, the Court should deny the plaintiff's motion.

II. THE COURT SHOULD DENY PLAINTIFF'S MOTION FOR LEAVE TO SERVE A DISCOVERY REQUEST

As stated above, after the parties fully briefed and argued Plaintiff's request for certain agency vacancy announcement and other documents, the Court denied Plaintiff's request on January

⁴The billable rate of \$265 per hour is based on the undersigned counsel's billable rate from private practice, which he left a little over one year ago.

10, 2006.⁵ As such, the Court should deny Plaintiff's second motion for the same documents, which is merely a recapitulation of his first motion, under the law of the case doctrine. While the doctrine is not an absolute bar to reconsideration of a motion nor a limitation on the Court's power, courts generally will only reopen issues already decided in the face of exceptional circumstances. See United States v. Rivera-Martinez, 931 F.2d 149, 150-151 (1st Cir. 1991). Plaintiff's second motion does not present such circumstances.

Indeed, Plaintiff's second motion presents largely the same issues and arguments as his first motion. See id. at 151 (discussing exceptions to law of the case doctrine). While, Plaintiff's second motion introduces new allegations, it does not offer any substantially different evidence from what he presented in his first motion. These new allegations hardly amplify the record so that the Court should disregard its previous ruling. Further, he does not provide the Court with any new contrary decision by a controlling authority that would compel the Court to reconsider its denial of his first motion. See id. Nor does the Plaintiff argue or produce evidence showing that the Court's

⁵Previously, the defendants opposed Plaintiff's request for this information on the grounds that (i) he never exhausted the numerous failure-to-promote claims he is attempting to assert now before this Court, (ii) the allegations, purportedly dating back to 1999, are clearly untimely, and (iii) the Plaintiff cannot introduce an untimely discrete act of retaliation as evidence to support a timely discrete act of retaliation.

denial of his first motion "was clearly erroneous and would work a manifest injustice." See id. Accordingly, the Court should not reconsider its first refusal to grant Plaintiff's request for these documents.

III. THE UNITED STATES IS UNDER NO OBLIGATION TO PAY FOR THE TRAVEL COSTS OF PLAINTIFF'S DEPONENTS

Plaintiff also makes the specious request for an order requiring the United States to reimburse him for the travel costs of Larry Blim and Lisha Dorman from Washington, D.C., to Boston in order to attend his depositions. The United States is under no obligation to pay for an opposing party's litigation costs. Plaintiff's reliance on language purportedly from "the U.S. Attorney's Manual" to support his argument to the contrary is clearly misplaced. Clearly, the language speaks to circumstances where the government has summoned a witness to testify on its behalf - which is not applicable here.

During the status conference on December 6, 2005, the Court - perhaps recognizing that under 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure it cannot require a person to travel to a place more than 100 miles from the place where that person resides or works to appear for a deposition - asked the government if Mr. Blim and Ms. Dorman would be available for deposition, which the government answered essentially "yes," meaning that it would help to facilitate the depositions. The government, however, never agreed to pay for Plaintiff's

deposition costs. As to Plaintiff's question of defense counsel motives, the undersigned counsel suggested to Plaintiff several less expensive ways to conduct his depositions of Mr. Blim and Ms. Dorman, to which he declined and, instead, chose to fly them to Boston for his depositions.

IV. THE COURT SHOULD DENY PLAINTIFF'S REQUEST FOR OFFICIAL PAY WHILE HE LITIGATES HIS ACTION AGAINST THE UNITED STATES

Plaintiff requests an order requiring the United States to compensate Plaintiff while he litigates his case and to reinstate the 20 hours of annual leave he used to conduct his depositions on January 12, 2006, and January 18, 2006. The federal regulation Plaintiff relies upon for such relief, 29 C.F.R. § 1614.605(b), concerns federal employees who spend "official time" responding to or appearing before the EEOC. See Sands v. Runyon, 28 F.3d 1323, 1332 (2d Cir. 1994). The regulation is completely inapplicable to the instant case as the Plaintiff has withdrawn his discrimination claims from the EEOC and filed the claims - in addition to non-discrimination claims - in federal court. Plaintiff is merely trying to circumvent agency policy requiring employees who bring civil actions against it to litigate those actions on their own time.

CONCLUSION

Accordingly, for the reasons articulated above, the Court should deny plaintiff's motion for leave.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ Damian W. Wilmot
DAMIAN W. WILMOT
Assistant U.S. Attorney
Moakley Federal Courthouse
One Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3100

Dated: February 6, 2006

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Pages 1 to 59
Exhibit 77

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

- - - - -x
JOHN G. PEDICINI, :
Plaintiff, :
vs. : Civil Action
: No. 04-12395 JLT
UNITED STATES OF AMERICA, and :
ANN M. VENEMAN, SECRETARY, :
UNITED STATES DEPARTMENT OF :
AGRICULTURE, :
Defendants. :
- - - - -x

DEPOSITION OF JONATHAN LASH, a witness
called on behalf of the Plaintiff, taken pursuant to
the Federal Rules of Civil Procedure, before Laura
E. Antoniotti, Registered Professional Reporter and
Notary Public in and for the Commonwealth of
Massachusetts, at the Offices of Doris O. Wong
Associates, 50 Franklin Street, Boston,
Massachusetts, on Tuesday, August 2, 2005,
commencing at 1:15 p.m.

PRESENT:

The Catapano-Friedman Law Firm
(By Robert S. Catapano-Friedman, Esq., and
Sarah Catapano-Friedman, Esq.)
50 Franklin Street, Boston, MA 02110,
for the Plaintiff.

(Continued on next page)

1 A. I was a management analyst Step 12 for
2 approximately nine years. Before that I was -- I
3 worked in the Food Stamp Program from when I went
4 from Grade 2 to Grade 11.

5 Q. Grade 2 to Grade 11 over what period of
6 time?

7 A. Six years.

8 Q. Wow.

9 A. I was getting a master's degree.

10 Q. Great. Now you're currently stationed in
11 Washington, D.C. at headquarters?

12 A. Yes, sir.

13 Q. And have you always been stationed at -- in
14 headquarters in Washington, D.C.?

15 A. Yes, sir.

16 Q. As part of your duties, do you keep any
17 lists of the budget analysts or budget officers
18 within FNS?

19 A. We have a telephone list of the people who
20 work in the budget division in headquarters.

21 Q. Do you know who prepares the list?

22 A. Gloria Morton works in the program
23 accountability branch I think it's called.

24 Q. Did you receive your list from her?

1 A. Yes.

2 Q. Did she provide this list to you in the
3 ordinary course of business?

4 A. Yes. It's a courtesy really. She just
5 keeps tracks of people's phone numbers as they
6 change. It's not a formal published list. It's
7 just when people change their desks or new employees
8 show up, she'll just add the name and E-mail it
9 around to everybody if we need to call somebody.

10 Q. Let me have some documents. We'll go right
11 to the documents. Let me show you what's been
12 marked as Plaintiff's Exhibit 10 and ask you to take
13 a look at this document and see if you recognize it.

14 A. Oh, yes, I recognize it. I don't think I
15 prepared this one. I think maybe Angie McElmurray
16 prepared this one. Yes, that's her initials.

17 Q. Can you tell me what this document is?

18 A. Listing of the funds officers.

19 Q. And you said you don't think you prepared
20 this particular document?

21 A. No, I didn't.

22 Q. Have you prepared other funds officers
23 listings?

24 A. Yes, since Angie left I took over editing

1 this as changes are made, as funds officers leave
2 and new ones arrive. I have this file.

3 Q. Is this an official list of funds officers?

4 A. Could you define "official" for me?

5 Q. Why don't you tell me what this document
6 is.

7 A. It's an Excel spreadsheet that we type in
8 the names and phone numbers of people as allowance
9 holders of organizations and funds officers as they
10 change.

11 Q. Do you do this in the ordinary course of
12 business?

13 A. Yes.

14 Q. Is this to your knowledge an accurate list
15 of funds officers and allowance holders as of the
16 date of this list?

17 A. January 26, 1999?

18 Q. Yes.

19 A. I have no reason to doubt its authenticity
20 or accuracy.

21 Q. Is this a list that you received and
22 possessed in the ordinary course of business?

23 A. I don't believe I possessed this one
24 because I wasn't working in the budget division at

1 the time this one was created; however, I probably
2 received subsequent versions with different names.

3 Q. With different names?

4 A. As they were updated as people left, people
5 retired.

6 Q. Let me direct your attention to the NERO
7 line. Do you see where it relates to NERO? And can
8 you tell me what it says about NERO on that list?

9 A. The allowance holder is Fran Zorn, her
10 phone number. The FPA officer is Marty Hines. The
11 FPA backup is John Pedicini and the phone number of
12 each one of them and the fax number.

13 Q. To your knowledge, was Fran Zorn as of the
14 date of that list the allowance holder for FNS-NERO?

15 A. To the best of my knowledge she would have
16 been, yes.

17 Q. And to the best of your knowledge, was
18 Marty Hines the -- was it funds officer for
19 FNS-NERO?

20 A. As long as I've known the funds officers,
21 Marty Hines has been the funds officer for NERO.

22 Q. And to your knowledge, was John Pedicini
23 the -- what was he listed as?

24 A. Backup.

1 Q. Back-up funds officer?

2 A. Yes.

3 Q. At FNS-NERO on the date of that list in
4 1999?

5 A. That's his name there. I assume that he
6 was the backup funds officer on that date.

7 Q. To your knowledge, did Mr. Pedicini
8 continue to be the backup funds officer after that
9 date?

10 A. Yes.

11 Q. Did you prepare a list subsequent to the
12 date of this list on which Mr. Pedicini's name
13 appears as the backup funds officer?

14 A. I can't say with certainty, but it's
15 probable that I did.

16 Q. And you in fact did prepare this list at
17 subsequent periods of time?

18 A. Yes.

19 Q. Do you continue to perform this list as
20 part of your ordinary duties in the ordinary course
21 of business?

22 A. Yes.

23 Q. I'm going to show you what's been marked
24 Plaintiff's Exhibit 11 and ask you whether you

1 Q. Were those statements true when you made
2 them?

3 A. To the best of my knowledge, yes.

4 Q. Are those statements true today?

5 A. To the best of my knowledge, yes.

6 Q. Do you have any reason to believe that
7 those statements were not true when you made them?

8 A. No.

9 Q. Do you have any reason to believe that
10 those statements are not true today?

11 A. No.

12 Q. In fact today you're the one who keeps the
13 list of backup funds officers and funds officers?

14 A. We have a list of -- that looks like this
15 one and when I think of it or if I think a change
16 has been made and we need to put out a new version
17 of it, then I do that.

18 Q. Can you tell me why you prepare and keep
19 this list?

20 A. To let everyone know who is doing what.

21 Q. And is this an official part of your job,
22 to do this, keep this list?

23 A. No.

24 Q. Is this a function, however, that you've

1 done routinely over the years since you've held your
2 current position?

3 A. Yes.

4 Q. Is this a function that was done routinely
5 to the best of your knowledge by your predecessor?

6 A. Yes.

7 Q. Are there standard functions that backup
8 funds officers perform within FNS?

9 A. I don't believe the backup funds officers
10 have set duties in one position description that
11 comes from headquarters.

12 I believe that those things are negotiated
13 at each individual organization depending on the
14 needs of the allowance holder and what works best.

15 Q. What about with respect to certification of
16 availability of funds? Is that something that is
17 standard throughout FNS-NERO with respect to the
18 functioning of backup funds officers?

19 A. I'd like to be able to answer that with
20 authority, but frankly I really never deal with
21 anybody but Marty Hines so I don't know.

22 Q. Well, you made a statement in that E-mail
23 that as a backup funds officer, Mr. Pedicini had the
24 right to certify the availability of funds.

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Exhibits None

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

- - - - -x
JOHN G. PEDICINI, :
Plaintiff, :
vs. : Civil Action
UNITED STATES OF AMERICA, and : No. 04-12395 JLT
ANN M. VENEMAN, SECRETARY, :
UNITED STATE DEPARTMENT OF :
AGRICULTURE, :
Defendants. :
- - - - -x

DEPOSITION OF DOUGLAS MacALLISTER, a
witness called on behalf of the Plaintiff, taken
pursuant to the Federal Rules of Civil Procedure,
before Jane M. Williamson, Registered Merit Reporter
and Notary Public in and for the Commonwealth of
Massachusetts, at the Offices of Doris O. Wong
Associates, 50 Franklin Street, Boston,
Massachusetts, on Monday, June 6, 2005, commencing
at 4:06 p.m.

PRESENT:

The Catapano-Friedman Law Firm
(By Robert S. Catapano-Friedman, Esq., and
Sarah Catapano-Friedman, Esq.)
50 Franklin Street, Boston, MA 02110, for
the Plaintiff.

(Continued on Next Page)

1 he has never been delegated eligibility to certify,
2 so I have never asked him if he knows how to
3 certify.

4 Q. Do you know whether Mr. Pedicini has been
5 listed as the backup funds officer for NERO on any
6 agency document?

7 A. What do you mean by "agency documents"?

8 Q. On any list that you've received from NERO,
9 national or otherwise.

10 A. Whose list? See, I have a problem, in that
11 somebody may send out a list, but I don't know if
12 it's blessed by FNS or it's not.

13 Q. Do you know a person by the name of
14 Jonathan Lash?

15 A. Yes, I do.

16 Q. Who is Jonathan Lash?

17 A. He works in the budget headquarters. He's
18 a budget analyst, as far as I know.

19 Q. Does he maintain a list with respect to the
20 individuals who are authorized to certify funds?

21 A. I do not know for a fact that he does.

22 Q. Does he have any knowledge as to who the
23 individuals are who are authorized to certify funds
24 within FNS?

1 A. Marty Hines has been the funds officer for
2 a long time.

3 Q. Did he have a backup back in 1995?

4 A. A backup?

5 Q. A funds officer who would certify in his
6 absence.

7 A. Who would certify funds availability --

8 Q. Funds availability in his absence.

9 A. Not that I'm aware of.

10 Q. So you certainly were not his backup in
11 1995, correct?

12 A. There has never been a backup for Marty to
13 certify funds availability, other than the
14 supervisor and myself, since I have been the
15 financial director.

16 Q. So you were a backup to Marty Hines --

17 A. For certifying funds availability, I sure
18 was, yes.

19 Q. Well, that was my question.

20 A. There's your answer.

21 Q. Now, in 1998, did that change?

22 A. No. The delegated responsibilities were
23 still the same. Supervisor for certifying funds
24 availability and then up to director for financial

1 management.

2 Q. Well, let me ask you this. Did it come to
3 your attention sometime in 1998 or 1999 that having
4 supervisors as the backup funds officers was not
5 adequate from the point of view of FNS?

6 MR. WILMOT: Objection. You can answer.

7 A. No, I was not aware of any such thing.

8 Q. It never came to your attention that you
9 needed an independent person as the backup funds
10 officer?

11 MR. WILMOT: Objection. You can answer.

12 A. No, it has not. It did not.

13 Q. And Arthur LeBlanc in 1998 appointed a
14 backup funds officer, did he not?

15 MR. WILMOT: Objection. You can answer.

16 A. A backup funds officer?

17 Q. Yes.

18 A. I guess I'm not really sure what's your
19 definition of a backup funds officer.

20 Q. What's your definition of a backup funds
21 officer?

22 A. To me, a backup funds officer is not
23 available. We have people who have backup functions
24 to the funds officer, but we have no backup funds

1 officer. We assign various functions to various
2 people to back up the funds officer, but they are
3 not backup funds officers.

4 Q. Did it come to your attention sometime in
5 1998 or 1999 that FNS required someone other than a
6 supervisor to back up Marty Hines in his fund
7 certification authority?

8 MR. WILMOT: Objection. You can answer.

9 A. You mean certifying --

10 Q. Certifying the availability of funds.

11 A. No, it did not come to my attention.

12 Q. Did it come to your attention that Arthur
13 LeBlanc in 1998 or 1999 appointed John Pedicini as
14 the individual to provide backup to Marty Hines in
15 certifying funds availability?

16 MR. WILMOT: Objection. You can answer.

17 A. Not in certifying funds availability, no.

18 Q. Well, what did come to your attention?

19 A. That Mr. Pedicini was given some functions
20 in which he would perform them if Marty Hines was
21 not there.

22 Q. And what were those functions?

23 A. Off the top of my head, I am not absolutely
24 certain what they are. He was the supervisor. He

1 was making the assignments.

2 Q. But now that we mention it, you do know
3 that Arthur LeBlanc did provide Mr. Pedicini with
4 some backup responsibilities regarding Marty Hines
5 back in 1998 and 1999, correct?

6 A. I can't swear to the time frame, but yes.

7 Q. But I need to speak to Mr. LeBlanc as to
8 what those responsibilities were, because you don't
9 remember what they are, right?

10 MR. WILMOT: Objection.

11 A. I've already answered. I don't know.

12 Q. That's correct. You don't remember,
13 correct?

14 A. I don't remember the dates.

15 Q. And you don't remember what
16 responsibilities they were, correct?

17 A. I don't remember specifically what
18 responsibilities they were, correct.

19 MR. WILMOT: And objection to the question.

20 Q. Now, was it your responsibility to nominate
21 individuals to receive awards on October 7, 2004?

22 A. Anyone in the office can nominate another
23 person for an award. So the answer to that is,
24 Sure, I could nominate people.

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

- - - - -x
JOHN G. PEDICINI, :
Plaintiff, :
 :
vs. : Civil Action No.
 : 04-12395 JLT
UNITED STATES OF AMERICA, and :
ANN M. VENEMAN, SECRETARY, :
UNITED STATES DEPARTMENT OF :
AGRICULTURE, :
Defendants. :
- - - - -x

CONTINUED DEPOSITION OF DOUGLAS A.
MacALLISTER, a witness called on behalf of the
Plaintiff, taken pursuant to the Federal Rules of
Civil Procedure, before Susan J. Cataldo, Professional
Shorthand Reporter and Notary Public in and for the
Commonwealth of Massachusetts, at the Offices of Doris
O. Wong Associates, Inc., 50 Franklin Street, Boston,
Massachusetts, on Friday, July 15, 2005, commencing at
10:13 a.m.

PRESENT:

The Catapano-Friedman Law Firm
(by Robert S. Catapano-Friedman, Esq., and
Sarah Catapano-Friedman, Esq.)
50 Franklin Street, Boston, MA 02110,
for the Plaintiff.

United States Department of Justice,
United States Attorney's Office
(by Damin Wilmot, Assistant United States
Attorney) United States Courthouse,
1 Courthouse Way, Suite 9200,
Boston, MA 02210, for the Defendants.

Also Present: John G. Pedicini

* * * * *

1 this exhibit.

2 A. (Witness reviews document) Not being
3 included in it, I don't recognize the specific
4 communications back and forth, no.

5 Q. Mr. MacAllister, do you recall having
6 objected to a -- to the use of a title by
7 Mr. Pedicini?

8 A. I do recall that there was an objection to
9 the use of a title that I concurred with, yes.

10 Q. Okay. And what was that objection?

11 A. The objection by the deputy regional
12 administrator was that Mr. Pedicini was using a
13 title was not either a working title or part of his
14 job title and that he wanted us to look into it, and
15 we did. I relayed the information down to his
16 supervisor.

17 Q. Okay. And did his supervisor at your
18 instructions instruct Mr. Pedicini no longer to use
19 that particular job title?

20 A. He did so inform Mr. Pedicini, yes.

21 Q. Okay. And do you recall what that job
22 title was?

23 A. Alternate funds officer.

24 Q. Alternate or backup funds officer, correct?

1 A. I believe --

2 MR. WILMOT: Objection.

3 A. I believe it said "alternate funds
4 officer." There is a difference between backup and
5 alternate.

6 Q. What's the difference backup and alternate
7 funds officer?

8 A. Neither one are specific job titles.
9 However, Mr. Pedicini backed up the funds officer in
10 some functions, and that's the phrase we always use.
11 We don't use "he's the alternative funds officer."
12 We use "you're the backup funds officer."

13 Q. Okay. And what is an alternative funds
14 officer?

15 A. I have no idea. You tell me. There's no
16 formal job title in FNS called alternative funds
17 officer.

18 Q. Okay. So it's a title that you do not use
19 at FNS NERO, correct?

20 A. I've been the FMD for 16 years. I don't
21 ever remember it being used. It doesn't mean it
22 can't have slipped by me, but I certainly don't
23 remember seeing it used.

24 Q. Okay. Do you know whether certifying

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1 availability of funds authorization attaches to
2 either an alternate funds officer or a backup funds
3 officer?

4 A. I'm sorry. Repeat the question again,
5 please.

6 Q. Yes. Do you know whether the authorization
7 to certify the availability of funds attaches to the
8 title of alternate funds officer or backup funds
9 officer?

10 MR. WILMOT: Objection. Answer.

11 Q. Well, let me ask the question in a
12 different way. Do you know whether a backup funds
13 officer or alternate funds officer has the authority
14 within FNS to certify the availability of funds?

15 MR. WILMOT: Objection.

16 A. There's no such title in FNS that I'm aware
17 of, so they don't have any authority to do anything,
18 because there's not a job title called alternate
19 funds officer. There's not a formal job title
20 called backup funds officer.

21 Q. Okay. So it's your testimony that the
22 title alternate funds officer does -- or backup
23 funds officer does not exist at FNS?

24 A. In no formal PD am I aware of that the job

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1 title for that position is backup funds officer or
2 alternative funds officer. That's my testimony.

3 Q. Okay. What about the title alternate funds
4 control officer, does that exist at FNS NERO -- at
5 FNS?

6 A. Not in NERO. I don't know about throughout
7 FNS.

8 Q. So that's a title that may attach to
9 certain individuals in other regions of FNS?

10 MR. WILMOT: Objection. Answer.

11 A. I have no way of knowing one way or the
12 other.

13 Q. Okay. And you've never seen the use of the
14 title alternate funds control officer within FNS?

15 MR. WILMOT: Objection. You can answer.

16 A. Not that I can recollect, no.

17 Q. Okay.

18 MS. CATAPANO-FRIEDMAN: Mark that.

19 (Document marked as Plaintiff
20 Exhibit 62 for identification)

21 MS. CATAPANO-FRIEDMAN: And those as well.

22 (Documents marked as Plaintiff
23 Exhibit 63 to 65 for identification)
24 (Discussion off the record)

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

- - - - -x
: JOHN G. PEDICINI,
: Plaintiff,
: vs. : Civil Action
: : No. 04-12395 JLT
: UNITED STATES OF AMERICA, and :
: ANN M. VENEMAN, SECRETARY, :
: UNITED STATES DEPARTMENT OF :
: AGRICULTURE, :
: Defendants. :
: :
- - - - -x

DEPOSITION OF JOHN J. GHIORZI, a witness called on behalf of the Plaintiff, taken pursuant to the Federal Rules of Civil Procedure, before Daniel P. Wolfe, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the Offices of Doris O. Wong Associates, 50 Franklin Street, Boston, Massachusetts, on Thursday, June 23, 2005, commencing at 10:05 a.m.

PRESENT:

The Catapano-Friedman Law Firm
(By Robert S. Catapano-Friedman, Esq., and Sarah Catapano-Friedman, Esq.) 50 Franklin Street, Boston, MA 02110, for the Plaintiff.

United States Department of Justice, United States Attorney's Office
(By Gina Y. Walcott-Torres, Assistant United States Attorney) United States Courthouse, 1 Courthouse Way, Suite 9200, Boston, MA 02210, for the Defendants.

Also Present: John G. Pedicini
Salama Abdurrahim, summer intern.

1 look, and John can stay.

2 BY MR. CATAPANO-FRIEDMAN:

3 Q. Let's move on. Do you recall that Mr.
4 Pedicini had been appointed -- held the position of
5 alternative funds officer at one point in time?

6 MS. WALCOTT-TORRES: Objection. You may
7 answer.

8 A. I recall that title being discussed with me
9 by Mr. Pedicini. I don't think that there was such
10 a title of an individual in our organizational
11 chart. What did you call it?

12 Q. Alternative or backup funds officer.

13 A. I don't recall that being an official title
14 of a position in our organization.

15 MS. WALCOTT-TORRES: Counselor, are you
16 using "alternative" and "backup" interchangeably, or
17 which is the title?

18 MR. CATAPANO-FRIEDMAN: Yes, I think it is
19 interchangeable, "backup," "alternative,"
20 "alternate."

21 MR. PEDICINI: Alternate funds officer?

22 MS. WALCOTT-TORRES: Alternate funds
23 officer, yes.

24 Q. I'm sorry. Alternate funds officer.

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

- - - - -x
JOHN G. PEDICINI, :
Plaintiff, :
vs. : Civil Action
UNITED STATES OF AMERICA, and : No. 04-12395 JLT
ANN M. VENEMAN, SECRETARY, :
UNITED STATE DEPARTMENT OF :
AGRICULTURE, :
Defendants. :
- - - - -x

DEPOSITION OF ROBERT L. CANAVAN, a witness called on behalf of the Plaintiff, taken pursuant to the Federal Rules of Civil Procedure, before Jane M. Williamson, Registered Merit Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the Offices of Doris O. Wong Associates, 50 Franklin Street, Boston, Massachusetts, on Tuesday, June 7, 2005, commencing at 11:09 a.m.

PRESENT:

The Catapano-Friedman Law Firm
(By Robert S. Catapano-Friedman, Esq., and Sarah Catapano-Friedman, Esq.)
50 Franklin Street, Boston, MA 02110, for the Plaintiff.

(Continued on Next Page)

1 recall any situation where you felt that Martin
2 Hines was not telling you the truth?

3 A. No.

4 Q. So as we sit here today, you've got no
5 reason to question Martin Hines' honesty, correct?

6 A. That's correct.

7 Q. Who is the backup funds officer at NERO?

8 A. The funds officer is Marty Hines. In his
9 absence, he's backed up by his first line
10 supervisor. In their absence, the responsibility
11 would go to Doug MacAllister.

12 Q. Is that always how it's been at NERO since
13 Marty Hines has been there?

14 A. As far back as I can recall. Marty Hines
15 has been there since the region -- close to when the
16 region opened.

17 Q. Well, when was that, approximately? And
18 then you can finish, if you can tell me
19 approximately when it opened.

20 A. September 1975.

21 Q. Okay. Go ahead. Complete your answer.

22 A. For as far back as I can recall and as far
23 as I can see documented, that has been the structure
24 of authorization of delegation of that

1 report?

2 A. I don't recall whether I immediately picked
3 up the phone or whether it was the next time I saw
4 Doug MacAllister. I returned this to him. I
5 clarified that for purposes of keeping clear control
6 over these kinds of reports, that I wanted to send
7 it back to Marty and have it prepared for Marty's
8 signature, wherein Marty certified to us that this
9 reflects his review of whatever the particular
10 contents -- in this instance, it was leave without
11 pay. In other instances, it could be other
12 documents, some of which would include research
13 conducted by other members of the section staff. I
14 recognized that.

15 Q. And did you tell Mr. MacAllister and Mr.
16 Malone anything else that you found objectionable
17 about this report?

18 A. It wasn't objectionable so much as
19 inaccurate. It was the assignment of the title
20 "alternate funds officer" to Mr. Pedicini.

21 Q. What did you tell them about that
22 inaccuracy?

23 A. Confirmed with them that there is not a
24 title "alternate funds officer" and directed them to

1 clarify any misunderstanding that might be on
2 anybody's part.

3 Q. I'd like you to see -- examine Plaintiff's
4 Exhibit No. 21 and let me know whether you can
5 identify that.

6 A. That was October 19th?

7 Q. Right.

8 A. And this is October 22nd from Michael
9 Malone to John Pedicini. "Subject: Inappropriate
10 use of non-official job title."

11 "In reviewing recent correspondence, I
12 recognized that you included in a memorandum your
13 title as 'Alternate Funds Officer-NERO.' This was
14 inappropriate because your official job title on
15 your AD-332 is 'Financial Management Specialist.'
16 Designations regarding roles and/or rights you have
17 in a system such as Alternate Funds Officer (FFIS)
18 and Certifying Officer (IAS) does not mean that you
19 have those job titles or have signatory
20 responsibility using those titles.

21 "Please refrain from using those titles in
22 the future.

23 "Please see me in person if you have any
24 questions."

1 have?

2 A. I don't know that that has or hasn't taken
3 place.

4 Q. Well, let's assume it hasn't taken place.
5 As deputy administrator, isn't that something you
6 personally would like to know?

7 A. Well, as deputy regional administrator, I
8 work directly for the allowance holder, who has sole
9 responsibility for the assignment of the funds
10 officer responsibility in a region. I know
11 categorically and definitively from her that she has
12 delegated the funds officer status to Martin Hines
13 throughout her tenure as regional administrator.
14 And in his absence, that that function is assigned
15 to his first line and then subsequently to a second
16 line supervisor. Since the allowance holder has the
17 sole utterance that bears on this, I --

18 Q. So you don't care. You don't care what
19 information Mr. Pedicini might provide. If Frances
20 Zorn says she doesn't want him as alternate funds
21 officer, that's all you need to know; is that right?

22 A. She has the sole authority to designate the
23 funds officer. And she has the first and the last
24 word on that.

1 Q. And how do you know that?

2 A. That's long established practice that I've
3 confirmed in conversations with my regional
4 administrator and with people in the budget office.

5 Q. In the national budget office?

6 A. Uh-hum.

7 Q. Including Jonathan Lash? Have you spoken
8 to him about it?

9 A. Jonathan Lash doesn't have standing in this
10 issue.

11 Q. He has no standing whatsoever?

12 A. He has no standing on the assignment of
13 funds officer.

14 Q. What about Larry Blim? Does he have any
15 standing on this matter?

16 A. The budget officer has -- ultimately, it's
17 the deputy for financial management who would assign
18 this authority to the allowance holders.

19 Q. And what's Mr. Blim's position?

20 A. He's the director of the accounting
21 division.

22 Q. Does Mr. Blim have any authority with
23 respect to this matter?

24 A. No.

1 Q. To your knowledge.

2 A. To my knowledge, no.

3 Q. Who does have authority with respect to
4 this matter in the national office?

5 A. I would say David Burr and Gary Maupin.

6 Q. And what are their positions?

7 A. David Burr is the director of the budge
8 office, office of budget; and Gary Maupin is the
9 deputy administrator for financial management.

10 Q. Have you spoken to either David Burr or
11 Gary Maupin as to whether John Pedicini ever had
12 alternate funds officer -- ever held the alternate
13 funds officer position?

14 A. I have not had that conversation with them.

15 Q. Do you know whether Frances Zorn has had
16 that conversation?

17 A. I believe she has.

18 Q. Has she told you she had that conversation
19 with him?

20 A. I believe that's a fair account of the
21 discussion that we've had.

22 Q. And she told you that both of them said
23 that -- what did she tell you about that
24 conversation she had?

1 A. That that conversation confirmed that
2 allowance holders within the agency have exclusive
3 authority to establish funds officer status in their
4 area of responsibility.

5 Q. So that Douglas MacAllister never had the
6 authority to establish funds officer authority; is
7 that correct?

8 MR. WILMOT: Objection.

9 Q. To your knowledge.

10 A. She could have delegated that -- the
11 identification of that to him.

12 Q. Absent a delegation by the regional
13 administrator, would Mr. MacAllister have the
14 authority to delegate to others the function of the
15 funds officer?

16 A. He would have that authority through
17 delegation from the regional administrator.

18 Q. Only through delegation; is that right?

19 A. She has the authority to designate a funds
20 officer, so she would need to delegate that to Doug.

21 Q. So if Frances Zorn or her predecessor had
22 not delegated that authority to Doug MacAllister,
23 then he would not have the authority; is that
24 correct?

1 A. Say that one again.

2 Q. If Frances Zorn or her predecessor, as the
3 regional administrator, had not delegated to Douglas
4 MacAllister the authority to appoint funds officer
5 duties, then Mr. MacAllister would not have the
6 authority to make such appointments, correct?

7 A. His authority would come from her
8 delegation.

9 Q. And only through her delegation, to your
10 knowledge?

11 A. To my knowledge.

12 Q. Do you know whether John Pedicini received
13 the authority as backup funds officer through
14 delegation at any point in time from the regional
15 administrator?

16 A. Not to my knowledge.

17 Q. Do you know whether the regional
18 administrator delegated that authority to John
19 Ghiorzi or Douglas MacAllister?

20 A. I am not certain of that.

21 Q. Do you know whether the regional
22 administrator had delegated that authority to Arthur
23 LeBlanc?

24 A. I don't know the answer to that.

1 Q. So you don't know whether or not any of
2 these individuals had the authority to appoint John
3 Pedicini backup funds officer, correct?

4 A. I don't know what delegations that regional
5 administrators have made. I'm just not familiar
6 with what they might have been in the past.

7 Q. So since you don't know who may have had
8 the authority to delegate this position to Mr.
9 Pedicini, don't you think it would be a good idea to
10 ask him what evidence he has about having received
11 this authority?

12 A. See the documentation and see what it is.

13 Q. So you agree, then, it would be a good idea
14 for you personally to receive this documentation
15 from Mr. Pedicini, so you can review it, correct?

16 MR. WILMOT: Objection. You may answer.

17 Q. I'm asking whether you would like to at
18 this point receive the documentation that Mr.
19 Pedicini has regarding his appointment as backup
20 funds officer based on the information you now have.

21 A. I think whatever information bears on this
22 case should be on the table.

23 Q. Okay. So if Mr. Pedicini at this point in
24 time were to present you with this evidence, would

1 this be something that you would review?

2 A. I'll review anything that's on the table
3 that's pertinent to this case.

4 Q. And if he were to satisfy you that he in
5 fact was properly appointed backup funds officer,
6 would that change your position with respect to his
7 use of that title?

8 A. The current funds officer as designated by
9 the allowance holder is Martin Hines. The
10 responsibilities of that position in his absence are
11 assigned to his first line supervisor and to Douglas
12 MacAllister. I can't testify encyclopedically to
13 all history. I know that for as long as
14 documentation is available, which goes back, I want
15 to say, ten years, that has been the line of
16 delegation.

17 Q. So it really doesn't matter to you whether
18 Mr. Pedicini had been appointed alternate funds
19 officer in the past?

20 A. I don't know what has been done in the
21 past. What I know is in the period throughout our
22 current documentation, going back a decade, there
23 has been an unchanging structure of delegation.

24 Q. And if he were to have had this delegation,

1 it's okay with you that it's now been taken away?

2 A. It's not been taken away. It hasn't
3 existed, so --

4 Q. Well, you don't know whether it's existed
5 or not, do you?

6 A. Well, by examination of documents and
7 discussion with the people who are in a position to
8 take action on this delegation, I would say, No, I'm
9 confident that he has not been and is not the
10 alternate funds officer.

11 Q. Yet, you refuse to see the documentation
12 that he says he has --

13 MR. WILMOT: Can we take a quick break. I
14 have to call my office.

15 (Off the record)

16 BY MR. CATAPANO-FRIEDMAN:

17 Q. I've now presented Mr. Canavan with
18 Plaintiff's Exhibit 24, which is a series of emails
19 from John Pedicini and I believe from Joe Stanco.
20 And is there anybody else who has sent emails in
21 this document, Mr. Canavan?

22 A. (Witness reviews document)

23 MR. CATAPANO-FRIEDMAN: I'm asking Mr.
24 Canavan if he recognizes these emails, because I

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

- - - - -x
JOHN G. PEDICINI, :
Plaintiff, :
 :
vs. : Civil Action
 : No. 04-12395 JLT
UNITED STATES OF AMERICA, and :
ANN M. VENEMAN, SECRETARY, :
UNITED STATE DEPARTMENT OF :
AGRICULTURE, :
Defendants. :
- - - - -x

DEPOSITION OF FRANCES E. ZORN, a witness called on behalf of the Plaintiff, taken pursuant to the Federal Rules of Civil Procedure, before Jane M. Williamson, Registered Merit Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the Offices of Doris O. Wong Associates, 50 Franklin Street, Boston, Massachusetts, on Monday, June 6, 2005, commencing at 10:05 a.m.

PRESENT:

The Catapano-Friedman Law Firm
(By Robert S. Catapano-Friedman, Esq., and Sarah Catapano-Friedman, Esq.)
50 Franklin Street, Boston, MA 02110, for the Plaintiff.

(Continued on Next Page)

1 Q. Do you know whether John Pedicini has fund
2 certification authority?

3 A. He does not. And by that, I mean, he is
4 not delegated authority as the budget officer or an
5 alternate in the budget officer role.

6 Q. Do you know whether John Pedicini ever
7 obtained the title of alternate funds officer
8 during --

9 A. He did not.

10 Q. He did not. He never did?

11 A. That's correct.

12 Q. And it never came to your attention that he
13 had obtained this title?

14 MR. WILMOT: Objection.

15 A. The funds officer position is one that is
16 delegated from the regional administrator. And I
17 sign letters of delegation, and they have been
18 consistently to Martin Hines and with alternates
19 being the first and second line supervisors.

20 Q. Has John Pedicini ever held the title of
21 backup funds officer?

22 A. There is no such title.

23 Q. So there's no such title that you have
24 approved for John Pedicini, correct?

1 A. He has a title.

2 Q. All right. Well, what is his title?

3 A. His title is financial management
4 specialist.

5 Q. Okay. What about Martin Hines? Does he
6 have the title of funds officer?

7 A. He does.

8 Q. Does he also have the title of budget
9 analyst?

10 A. His position description I think is called
11 "budget officer" or something like that.

12 Q. Budget analyst or funds officer; are they
13 interchangeable?

14 A. No, they're not.

15 Q. They're not interchangeable, funds officer
16 and budget analyst?

17 A. The funds officer is delegated through the
18 agency. He has delegation authority from me through
19 a letter of delegation.

20 Q. And what about the position of budget
21 analyst?

22 A. That is a classification of a job within
23 the federal personnel system.

24 Q. Okay. And was that a classification used

1 to describe Martin Hines' job with your agency?

2 A. It can be. But he has been given a
3 specific delegated role, called "funds officer."

4 Q. In addition to being a budget analyst?

5 A. Yes.

6 Q. And does Mr. Hines have fund certification
7 authority?

8 A. He certifies that funds are available in
9 order to release funds in our financial systems.

10 Q. Okay. And who else has that authority
11 within your agency, within your region?

12 A. Marty is the primary person, Martin Hines.

13 Q. Okay.

14 A. And if he is unavailable, it is his
15 supervisor, Mike Malone, or it is Doug MacAllister,
16 the financial management director.

17 Q. Okay. And then at some point in time did
18 Mr. Stanco have that authority as well?

19 A. He did, as the first line supervisor.

20 Q. And each of these people received that
21 authority by your designation?

22 A. A letter of delegation, yes.

23 Q. A letter of delegation from you?

24 A. Yes.

1 Q. So you have the authority to certify funds?

2 A. In theory.

3 Q. In theory, but not in practice?

4 A. Right.

5 Q. Because you don't know how to do it, right?

6 A. Well, I'm the executive in charge. I'm not
7 the person who is operating our account systems and
8 certifying that the funds are available. It's a
9 function of our internal controls procedure.

10 Q. Okay. And you never delegated this
11 authority to John Pedicini, correct?

12 A. I did not.

13 Q. But John Pedicini has certified funds for
14 your agency on occasion, has he not?

15 MR. WILMOT: Objection.

16 A. If he's done so, he's done so without
17 authority.

18 Q. Without authority from you?

19 A. Right.

20 Q. And you do know that John Pedicini knows
21 how to certify funds, don't you?

22 MR. WILMOT: Objection.

23 A. Knowing how and being authorized to do so
24 are two different things entirely.

1 Q. Okay. To your knowledge, does Mr. Pedicini
2 know how to certify funds?

3 A. Well, actually, I don't know whether he
4 does know or not.

5 Q. You don't. You have no knowledge one way
6 or the other?

7 A. Right.

8 Q. Do you have any information on whether John
9 Pedicini knows how to certify funds from somebody
10 else?

11 A. Like what kind of information?

12 Q. Has anybody told you within your agency
13 whether John Pedicini knew how to certify funds?

14 A. I don't think so.

15 Q. So you never had a discussion with Martin
16 Hines about this?

17 A. Not that I'm recalling.

18 Q. And you never had a discussion with Douglas
19 MacAllister about this?

20 A. Only to the extent that -- you know, where
21 the letter of delegations are coming from. You
22 know, the process and sort of the chain of who would
23 be the primary and who would then --

24 Q. Okay. Can you tell me about what

1 conversations you had with Douglas MacAllister about
2 who should certify funds.

3 A. When he came to me with letters of
4 delegation, he explained to me that the way that we
5 had been doing the process of delegation of the
6 funds officer role was long-standing and predated my
7 appearance at the region, and that it had always
8 been a funds officer, backed up by the supervisory
9 chain.

10 Q. Okay. And did Douglas MacAllister tell you
11 since he was part -- when did Douglas MacAllister --
12 what's his position?

13 A. He's the financial management director.

14 Q. And when did he assume that position in
15 your organization?

16 A. I'm not entirely sure when, but it predated
17 my arrival at the region by a number of years.

18 Q. So he was there in 1996, when you got
19 there, right?

20 A. Yes.

21 Q. And the information you got from him was
22 that Marty Hines certified funds, as did --
23 historically, as did his supervisors, Marty Hines'
24 supervisors, correct?

1 A. Well, the information I had was that it was
2 rarely needed. It was a rare occasion when
3 something needed to be signed outside of Martin
4 Hines' signature.

5 Q. Okay.

6 A. That usually we could wait until he was
7 back.

8 Q. Okay. But in those rare instances, it was
9 the supervisor --

10 A. It was the supervisor or the financial
11 management director, Doug, himself.

12 Q. Okay. So it would be either Doug in his
13 absence or the immediate supervisor, which would be
14 when you arrived, that was Ghiorzi -- no. It was
15 LeBlanc?

16 A. It was LeBlanc.

17 MR. WILMOT: Objection.

18 Q. Art LeBlanc. So at that time it was either
19 MacAllister or LeBlanc, correct?

20 A. Yes.

21 Q. And it was your understanding that both of
22 them had been designated and delegated the authority
23 to certify funds before you arrived, correct?

24 A. Yes.

1 Q. And did it ever come to your attention that
2 Mr. MacAllister had not been authorized to certify
3 funds previously?

4 A. No.

5 Q. That never came to your attention?

6 A. No.

7 Q. Well, did you ever feel the need to
8 delegate certification authority to Douglas
9 MacAllister?

10 A. I have delegated it and redelegated it --
11 or reinforced it through a second letter, just sort
12 of a resumption -- I'm not using the right word.
13 Once in a while you reup it, the certification.

14 MR. CATAPANO-FRIEDMAN: Could I have these
15 marked as Plaintiff's Exhibit 7 and 8. And this
16 will be whatever the next one is. And I've got
17 three more.

18 (Documents marked as Plaintiff's
19 Exhibits 7 through 13
20 for identification)

21 Q. What's an allowance holder?

22 A. It's the term we use in the Food and
23 Nutrition Service to allot money to -- we allot
24 money to various organizations. The regions are one

1 Q. It's some other alternate funds officer?

2 A. That it's an alternate capacity to input
3 data into the -- in this case, FFIS system, the
4 accounting system. It does not mean that it is --
5 only the funds officer can release the funds,
6 ultimately.

7 Q. So even though Mr. Pedicini is listed as
8 alternate funds officer on this list, it could be
9 for a different purpose than being the alternate
10 funds officer for certifying purposes; is that
11 correct?

12 A. In terms of what was delegated -- what
13 we've been talking about in the letters that I use
14 to delegate?

15 Q. Correct.

16 A. This is something entirely different.

17 Q. Something entirely different. So even
18 though you did not delegate Mr. Pedicini alternate
19 funds officer duties, he may have had them in a
20 different context; is that right?

21 MR. WILMOT: Objection.

22 Q. You can answer the question.

23 A. He had responsibilities to input
24 information into our accounting system that would be

1 later certified for release by our budget officer,
2 our funds officer.

3 Q. And that's what this means here on this
4 list?

5 A. That's what I would read it as.

6 Q. And did Mr. MacAllister also have
7 responsibility to input information into the FFIS
8 NERO system that would later be used by the funds
9 officer?

10 A. This is a contingency plan, so yes. In a
11 contingency, he could. And since --

12 Q. And Stanco can do that, too, in a
13 contingency, right?

14 MR. WILMOT: If she's answering the
15 question, could you let her finish her answer before
16 you --

17 Q. Sure. I'm sorry, I didn't mean to cut you
18 off. Go ahead and finish your answer.

19 A. But since Doug was also an alternate to the
20 funds officer, he could certainly certify them
21 himself without Marty.

22 Q. Okay. Now, is this information you have to
23 your knowledge or are you speculating on an
24 alternative meaning to the "alternate funds officer"

Volume I
Pages 1 to 57
Exhibits: None

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

- - - - -x
:
JOHN G. PEDICINI, :
Plaintiff, :
vs. : Civil Action :
: No. 04-12395 JLT :
UNITED STATES OF AMERICA, and :
ANN M. VENEMAN, SECRETARY, :
UNITED STATES DEPARTMENT OF :
AGRICULTURE, :
Defendants. :
:
- - - - -x

DEPOSITION OF ARTHUR J. LeBLANC, a witness called on behalf of the Plaintiff, taken pursuant to the Federal Rules of Civil Procedure, before Daniel P. Wolfe, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the Offices of Doris O. Wong Associates, 50 Franklin Street, Boston, Massachusetts, on Thursday, June 23, 2005, commencing at 1:25 p.m.

PRESENT:

The Catapano-Friedman Law Firm
(By Robert S. Catapano-Friedman, Esq., and Sarah Catapano-Friedman, Esq.) 50 Franklin Street, Boston, MA 02110, for the Plaintiff.

United States Department of Justice, United States Attorney's Office
(By Gina Y. Walcott-Torres, Assistant United States Attorney) United States Courthouse, 1 Courthouse Way, Suite 9200, Boston, MA 02210, for the Defendants and the Deponent.

Also Present: John G. Pedicini
Salama Abdurrahim, summer intern.

1 Q. What was his position?

2 A. He was the funds officer.

3 Q. As the funds officer, what did Marty Hines
4 do?

5 A. He was responsible for the FPA, the
6 administrative funds that were given.

7 Q. As part of his responsibilities did he
8 certify funds, the availability of funds?

9 A. Administrative funds, yes.

10 Q. Who was Mr. Hines's backup in certifying
11 funds?

12 MS. WALCOTT-TORRES: Objection.

13 Q. Did Mr. Hines have a backup in certifying
14 funds?

15 A. Yes.

16 Q. Who was Mr. Hines's backup in certifying
17 funds?

18 A. When I was chief, I was the backup.

19 Q. Was there anybody else who was backup?

20 MS. WALCOTT-TORRES: With respect to
21 certifying the funds?

22 Q. With respect to certifying funds.

23 A. Yes. After me would be Douglas
24 MacAllister.

1 another backup and you don't remember that, correct?

2 MS. WALCOTT-TORRES: Objection. Asked and
3 answered. The witness has said he does not remember
4 that.

5 Q. You can answer the question.

6 A. It's possible.

7 Q. And it is also possible that you appointed
8 Mr. Pedicini as backup funds officer to back up Mr.
9 Hines in certifying the availability of funds and
10 you don't remember that, correct?

11 MS. WALCOTT-TORRES: Objection.

12 A. I disagree. I believe I'd remember that.

13 Q. But it is possible you don't remember that?

14 A. Anything is possible.

15 Q. Sure. That's seven years ago, and you
16 remember everything that happened to you seven years
17 ago, correct?

18 MS. WALCOTT-TORRES: You can answer.

19 A. I don't remember everything that happened
20 seven years ago.

21 Q. You stated that you were appointed by Mr.
22 MacAllister to back up Mr. Hines on funds
23 availability certifications, correct?

24 A. Right.

1 A. Yes.

2 Q. You just don't know what an FPA backup is?

3 A. Yes, that's true.

4 Q. This is a term you never saw before,
5 correct?

6 A. Right.

7 Q. This is the first time, as I show you this
8 list? You have never seen that terminology used
9 before, correct?

10 A. Right.

11 Q. Do you know the name John Lash?

12 A. He is from headquarters. Yes.

13 Q. Who is he?

14 A. I know he is an FM. I'm not sure what his
15 role is.

16 Q. But he is from headquarters?

17 A. Right.

18 Q. If John Lash said that John Pedicini was an
19 FPA backup with the authority to certify the
20 availability of funds, would he have any reason to
21 lie, to your knowledge?

22 MS. WALCOTT-TORRES: Objection.

23 A. Again, I don't know that he would have any
24 reason to lie. I just don't know that he is

1 authorized to say that.

2 Q. Okay. So if he said that, you would
3 question his authority, correct?

4 A. I would, yes, because in my tenure the only
5 one that can designate the FPA officer in NERO is
6 the regional administrator.

7 Q. The regional administrator being Frances
8 Zorn when you were there?

9 A. Right.

10 Q. So Mr. MacAllister's appointment of you in
11 1995 was not authorized, then?

12 A. I don't know that it was. I'm not sure. I
13 have only shown you two documents. There are other
14 documents where I believe it was delegated to me
15 from Fran. I just don't have the document.

16 Q. So you have no other document where you get
17 a direct --

18 A. I don't personally.

19 MS. WALCOTT-TORRES: One at a time.

20 Q. You have no document?

21 A. I have no document.

22 Q. You don't know for sure whether such a
23 document exists, correct?

24 A. I believe it does, but I don't have it and

1 ability to delegate from Fran Zorn the authority to
2 certify the availability of funds?

3 MS. WALCOTT-TORRES: Objection. Asked and
4 answered a number of times.

5 Q. "Yes" or "no"?

6 A. I think my answer is there were no others
7 other than Doug and myself.

8 Q. Okay. That's fine.

9 MR. CATAPANO-FRIEDMAN: Could we have a
10 minute, please.

11 (Recess taken)

12 MS. WALCOTT-TORRES: Did you suspend,
13 conclude, rest?

14 MR. CATAPANO-FRIEDMAN: Pending follow-up.

15 MS. WALCOTT-TORRES: Gina Walcott-Torres,
16 Assistant United States Attorney, for the Defendant.

17 CROSS EXAMINATION

18 BY MS. WALCOTT-TORRES:

19 Q. Mr. LeBlanc, to your knowledge or at least
20 during your tenure, was there ever a position,
21 either alternate funds officer or backup funds
22 officer?

23 A. Not that I am aware of. No, there wasn't.

24 Q. And would you have known if such a position

1 existed in your role?

2 A. Yes.

3 Q. Why is that?

4 A. I was a section chief over that unit.

5 Q. Mr. LeBlanc, you were shown Plaintiff's
6 Exhibit 10 a few moments ago by Attorney
7 Catapano-Friedman, and attention was drawn to the
8 column marked "FPA Backup." Have you ever heard of
9 a position called an "FPA Backup"?

10 A. No, not in name. I know there are people
11 there to do backup work. But no, I have not.

12 Q. Was John Pedicini during your tenure
13 ever -- did he ever hold a title of "FPA Backup"?

14 MR. CATAPANO-FRIEDMAN: I am going to
15 object. But you can answer the question.

16 A. No.

17 Q. In fact, "FPA Backup" could be a
18 descriptive name referring to someone providing
19 support or assistance to the FPA officer and not a
20 formal title; isn't that right?

21 MR. CATAPANO-FRIEDMAN: Objection.

22 A. I agree.

23 Q. And as section chief of that unit, wouldn't
24 you have been aware if anyone other than yourself

1 and Mr. MacAllister and Mr. Hines had been provided
2 with certification authority?

3 MR. CATAPANO-FRIEDMAN: Objection.

4 A. Yes.

5 Q. And to your knowledge, during that time no
6 one else other than you, Mr. MacAllister, and Mr.
7 Hines had certification authority in your unit; is
8 that right?

9 MR. CATAPANO-FRIEDMAN: Objection.

10 A. Yes.

11 MS. WALCOTT-TORRES: No further questions.

12 MR. CATAPANO-FRIEDMAN: We will just move
13 on to the video conference. We are done on this
14 one.

15 MS. WALCOTT-TORRES: Once again, this time
16 briefly I would like to reserve the right for
17 Assistant U.S. Attorney Damian Wilmot to come back
18 and ask questions, should the need arise, of Mr.
19 LeBlanc.

20 MR. CATAPANO-FRIEDMAN: Sure.

21 (Whereupon, the deposition was
22 suspended at 2:50 p.m.)
23
24

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

-----x
JOHN G. PEDICINI, :
Plaintiff, :
 :
vs. : Civil Action :
 : No. 04-12395 JLT :
UNITED STATES OF AMERICA, and :
ANN M. VENEMAN, SECRETARY, :
UNITED STATE DEPARTMENT OF :
AGRICULTURE, :
Defendants. :
-----x

DEPOSITION OF MICHAEL D. MALONE, a witness called on behalf of the Plaintiff, taken pursuant to the Federal Rules of Civil Procedure, before Laura E. Antoniotti, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the Offices of Doris O. Wong Associates, 50 Franklin Street, Boston, Massachusetts, on Friday, July 8, 2005, commencing at 11:30 a.m.

PRESENT:

The Catapano-Friedman Law Firm
(By Robert S. Catapano-Friedman, Esq., and Sarah Catapano-Friedman, Esq.)
50 Franklin Street, Boston, MA 02110,
for the Plaintiff.

(Continued on next page)

1 A. Yes, I do.

2 Q. Is this the cover sheet to the leave
3 without pay analysis that is attached to Plaintiff's
4 Exhibit 20?

5 A. Yes, it is.

6 Q. And on this cover sheet, who does it say
7 the analysis is from?

8 A. John G Pedicini.

9 Q. Does it say anything else?

10 A. Beside his name is has "alternate funds
11 officer-NERO."

12 Q. Alternate funds officer-NERO, was that a
13 title that Mr. Pedicini was entitled to use in your
14 opinion?

15 A. No, it was not.

16 Q. Was that one of the reasons why the front
17 office and you found the leave without pay analysis
18 objectionable?

19 MR. WILMOT: Objection. You can answer.

20 A. Yes.

21 Q. Just to make it clear, what you found
22 objectionable was the use by Mr. Pedicini of the
23 title alternate funds officer-NERO?

24 MR. WILMOT: Objection. You can answer.

1 this particular E-mail?

2 A. He's disagreeing with all statements in my
3 memo dated October 22, 2004.

4 Q. And is there something in particular that
5 he is objecting to in this particular E-mail?

6 A. The objection appears to be with the fact
7 that my initial response was that the designation of
8 alternate funds officer came from the system, the
9 FFIS system. He's saying that that was incorrect
10 and that he has sent information to his legal
11 counsel.

12 Q. Well, I don't think it exactly says that.
13 Would you just read Paragraph 2 into the record.

14 A. Yes. "Please be advised that I have
15 written proof that I have been the Alternate Funds
16 Officer for NERO for 6 years with certifying rights.
17 The designation does not come from 'a system' as you
18 incorrectly stated in your memo. Those documents,
19 along with this memo and other 'letters of
20 instruction from you,' have been forwarded to my
21 legal counsel."

22 Q. Did you ask Mr. Pedicini what documents he
23 has showing that he is an alternate funds officer?

24 A. No, I did not.

1 Q. Why didn't you ask him for that
2 documentation?

3 A. Because I knew his official job title and
4 it was not alternate funds officer. If he felt the
5 need to provide information to me, he could
6 certainly do so.

7 Q. Did you tell him that?

8 A. No, I did not.

9 Q. Did you receive documentation from
10 Mr. Pedicini on this issue?

11 A. Not to my knowledge.

12 Q. I'd like to show you Plaintiff's Exhibit 10
13 and see if you recognize this document.

14 A. Yes, I do.

15 Q. Do you know who prepared this document?

16 A. This particular document, no, I do not.
17 The date on this is 1/26/99. It's prior to me
18 assuming my current position.

19 Q. But you said you recognize it. How do you
20 recognize this document?

21 A. I recognize it in the fact that in a
22 similar form it is a document that is produced by
23 headquarters based on input from the regions and
24 their own knowledge as far as the funds officers in

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

- - - - -x
: JOHN G. PEDICINI, :
: Plaintiff, :
: vs. : Civil Action
: No. 04-12395 JLT
: UNITED STATES OF AMERICA, and :
: ANN M. VENEMAN, SECRETARY, :
: UNITED STATES DEPARTMENT OF :
: AGRICULTURE, :
: Defendants. :
: - - - - -x

VIDEOCONFERENCE DEPOSITION OF PARIDE MONTI
f/k/a JOSEPH STANCO, a witness called on behalf of
the Plaintiff, taken pursuant to the Federal Rules
of Civil Procedure, before Daniel P. Wolfe,
Registered Professional Reporter and Notary Public
in and for the Commonwealth of Massachusetts, at the
Offices of Doris O. Wong Associates, 50 Franklin
Street, Boston, Massachusetts, on Thursday, June 23,
2005, commencing at 3:25 p.m.

PRESENT:

The Catapano-Friedman Law Firm
(By Robert S. Catapano-Friedman, Esq., and
Sarah Catapano-Friedman, Esq.) 50 Franklin
Street, Boston, MA 02110, for the Plaintiff.

United States Department of Justice, United
States Attorney's Office
(By Gina Y. Walcott-Torres, Assistant
United States Attorney) United States
Courthouse, 1 Courthouse Way, Suite 9200,
Boston, MA 02210, for the Defendants.

Also Present: John Pedicini
Salama Abdurrahim, summer intern.

1 availability of funds; is that correct?

2 A. If you don't confirm what I am asking, I
3 will say yes, I do not understand your question.

4 Q. Did a fellow by the name of Marty Hines
5 report to you when you were at FNS?

6 A. Yes.

7 Q. What was his job title?

8 A. Budget officer, I believe.

9 Q. Do you know what functions he performed as
10 budget officer?

11 A. Administering the budget for the region.

12 Q. Did he also certify the availability of
13 funds? Did he function in that capacity?

14 A. Certifying the availability of operational
15 funds.

16 Q. Okay. And did John Pedicini act as his
17 backup in certifying the availability of operational
18 funds when you were section chief?

19 MS. WALCOTT-TORRES: Objection. You may
20 answer.

21 A. That was always an unclear point. And I
22 believe that Mr. Pedicini was never assigned to
23 certifying funds for him specifically.

24 Q. Nevertheless, did Mr. Pedicini certify

1 operational funds on occasion while you were a
2 section chief?

3 MS. WALCOTT-TORRES: Objection. You may
4 answer.

5 A. I cannot remember any time, specific time
6 that Mr. Pedicini certified funds for Mr. Hines.
7 Basically it was really my job to certify in the
8 absence of Mr. Hines.

9 Q. Did you have training in certifying the
10 availability of funds?

11 A. Yes.

12 Q. Where did you get this training?

13 A. Again, throughout my career as a civil
14 servant in the government, I had the best experience
15 in certifying funds availability.

16 Q. Who gave you the authority to certify the
17 availability of funds while at FNS?

18 A. I believe it was a memo or a letter that
19 officially assigned these duties to me.

20 Q. Who did that memo come from?

21 A. I'm not sure at this point exactly who the
22 issuer was.

23 Q. Okay. Can you tell me what the process was
24 at FNS for certifying the availability of funds

1 while you were there?

2 A. I had knowledge reported to me by Mr. Hines
3 of the status of funds being obligated, and when
4 presented with a document requiring funding, I will
5 evaluate. And if funds were available, I would
6 certify.

7 Q. Okay. Did you review any documentation
8 before you certified the availability of funds?

9 MS. WALCOTT-TORRES: Counselor, at what
10 time, or just in general?

11 MR. CATAPANO-FRIEDMAN: In general, the
12 process.

13 Q. Did the process entail your reviewing any
14 documentation before you certified funds?

15 A. Let me repeat. When presented with a
16 document to be certified requesting funds for some
17 specific purchase or reason, I would go back to the
18 reports that Mr. Hines would present to me as far as
19 the status of funds. And based on those reports
20 which showed whether funds were available or not and
21 how much, I would then evaluate the document
22 presented to me and will make a decision whether to
23 certify or not.

24 Q. Were these reports in hard copy or were

1 positive on this.

2 Q. Okay. Now, if you couldn't find the stamp
3 involved, would you certify funds anyway, or would
4 you wait until Mr. Hines came back to the office to
5 do it?

6 A. I'd probably certify anyway. I don't
7 think -- again, even the existence of a stamp or
8 not, I'm not clear. But to me really what it meant
9 was -- the signature was the main act.

10 Q. Who else in the office had the authority to
11 certify the availability of funds besides you and
12 Mr. Hines?

13 A. My supervisor.

14 Q. Who is that?

15 A. MacAllister. Mr. MacAllister.

16 Q. Anybody else?

17 A. I believe in that department probably we
18 are the only two in place of Mr. Hines.

19 Q. Do you know what IAS -- the IAS system is?

20 A. Say again. The --

21 Q. IAS system.

22 A. Again, you have to forgive me, but I tend
23 to confuse -- it all sounds familiar, I mean in the
24 sense I heard it before. But at this time I may

1 A. I think I said that. But what I mean is
2 that I think Mr. Pedicini implied or at the time
3 made statements that he had the authority. But as
4 far as I remember, there was never any document
5 showing that he had the authority. So by "unclear"
6 I mean there was objection. So I think just that.

7 Q. As you sit here today, Mr. Stanco, are you
8 telling me you never saw a document that Mr.
9 Pedicini showed you that indicated he did have
10 certification authority?

11 MS. WALCOTT-TORRES: Objection.

12 A. Yes. I don't remember any document, yes.

13 Q. You don't remember him providing you any
14 document that stated he was a backup funds officer
15 to Mr. Hines?

16 MS. WALCOTT-TORRES: Objection.

17 A. Yes.

18 Q. Do you recall such a document?

19 A. No, I don't recall such a document.

20 Q. The name Mr. Lash, does that mean anything
21 to you?

22 A. Lash?

23 Q. Lash, L-a-s-h, in headquarters.

24 A. This sounds -- it sounds like a name I

1 heard before, yes.

2 Q. Did Mr. Pedicini show you a document from
3 Mr. Lash that stated that Mr. Pedicini was a backup
4 funds officer and had funds certification
5 availability authority?

6 MS. WALCOTT-TORRES: Objection.

7 A. You want me to answer the question?

8 Q. Yes.

9 A. No, I don't remember such a document.

10 Q. You don't remember Mr. Pedicini sending you
11 e-mails stating that Mr. Lash had sent him a
12 document that verified his backup funds officer
13 status?

14 MS. WALCOTT-TORRES: Objection. You may
15 answer.

16 A. I do remember that Mr. Pedicini made
17 various insinuations about certain things existing.
18 But I haven't seen any document that I can recollect
19 that stated that Mr. Pedicini was backup for
20 certifying funds.

21 Q. I am going to read to you -- I am going to
22 show to you and read to you what is marked
23 Plaintiff's Exhibit 11. This is an e-mail from John
24 Pedicini to you. Can you see this document?